



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/917,904

07/31/2001

Bryan Elwood

114300.2140

1150

30734

7590

07/01/2004

BAKER + HOSTETLER LLP
WASHINGTON SQUARE, SUITE 1100
1050 CONNECTICUT AVE. N.W.
WASHINGTON, DC 20036-5304

EXAMINER

WEST, JEFFREY R

ART UNIT

PAPER NUMBER

2857

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/917,904	Applicant(s) ELWOOD ET AL.	
	Examiner Jeffrey R. West	Art Unit 2857	

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☒ The drawing correction filed on 27 May 2004 is a) ☐ approved or b) ☒ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


MARC S. HOFF
 SUPERVISORY PATENT EXAMINER
 TECHNOLOGY CENTER 2800

The proposed drawing correction is objected to because it includes reference number "65" which is not described in the specification.

Continuation of 2: The proposed amendments eliminating the limitation of "wherein the calculation is performed at a temperature of 20 degrees of Celsius," changing "holding a gas concentration and a gas sensor temperature constant over a previous hour during the normalizing step" to "holding a gas concentration and a gas sensor temperature constant over a previous hour prior to performing the normalizing step," eliminating the limitation specifying a 90% threshold, and several other proposed amendments, are new issues that would require additional search/and or consideration.

Continuation of 5: Applicant argues that "Dutton, et al. does not teach, inter alia, a method of predicting failure of gas sensors in an incubator environment comprising 'analyzing at least one gas sensor...adjusting a percentage gas sensor lifetime hours...normalizing the adjusted measurements... calculating a measurement for the sensor of a percentage lifetime hours used...and displaying a warning.'" The Examiner asserts that the invention of Dutton is only included to teach a general method for testing the operation of an incubator using oxygen and carbon dioxide sensors.

Applicant then argues that "Hatai does not cure the deficiencies of Dutton, et al., because it, too, does not provide a teaching of testing/predicting the life of the sensors as recited in claim 1 and similarly in claims 10 and 18."

The Examiner asserts that Applicant has not clearly indicated what Hatai fails to teach and further asserts that Hatai does disclose testing/predicting the life of sensors by teaching an electrochemical gas sensor and a corresponding method for analyzing the gas sensor for lifetime adjustment values, at predetermined sensor operation time intervals determined by a clock, comprising obtaining lifetime data from the sensor, adjusting the lifetime data obtained based up a stored calculation rule, and comparing the adjusted lifetime data to predetermined thresholds (0013) in order to display warning results to a user in the form of deterioration indications of the sensor (i.e. predetermined values of no deterioration) (abstract).

Applicant also argues that "Hatai teaches away from the present invention as claimed" because "Hatai is designed with gas sensor elements to detect carbon monoxide (CO) gas whereas the present invention tracks O2 and CO2 values. Carbon monoxide is all together different from the operating environment of the present invention. As denoted, for instance, in Applicant's specification, the incubator chamber preferably houses biological cultures. Such cultures are conducive to being destroyed in an environment of carbon monoxide as taught by Hatai. Thus, the apparatus of Hatai would not only fail to work properly, but would also be destructive to Applicant's invention."

The Examiner asserts that the invention of Hatai is included to modify the invention of Dutton to include a method for analyzing gas sensors for lifetime adjustment values. Such a combination would not destroy the invention of Dutton and, since Applicant's invention is not being modified, it would not be destructive to Applicant's invention. Further, adding the sensor analyzing method of Hatai to a primary reference does not change the environment of the primary reference to be that of carbon monoxide, but instead adds the method for monitoring the sensors to the present environment of the primary reference.

Applicant also requests a withdrawal of the finality of the previous Office Action because "[t]he Examiner has taken Official Notice that it is well known in the art to 'determine the life of gas sensors in the most four percentage hours.' However, this stance constitutes a new grounds of rejection since it pertains to a previously presented issue pertaining to the same prior art---Dutton/Hatai. The aforementioned issue also existed in the Office Action dated June 4, 2003, however, no Official Notice was given at that time. Thus the grounds of rejection was not necessitated by any amendment by Applicant."

First, the Examiner asserts that there were several amendments to the claims that necessitated the addition/removal of 35 U.S.C. 112 first and second paragraph rejections as well as 35 U.S.C. 102 rejections, and therefore the finality of the Office Action was appropriate. Second, the Examiner maintains that an assertion that the feature to be considered well-known in the art was made in the previous Office Action, specifically, "[f]urther, although the combination of Dutton and Hatai doesn't specifically disclose that the life values are in the form of percentage hours, this limitation is not considered critical to the patentability of the invention since it would have been obvious to one having ordinary skill in the art to express the data in any form desired. Further, as indicated by the cited documents below, it is well known in the art to determine the life of gas sensors in the form of percentage hours." The only change to this paragraph in the Office Action mailed January 27, 2004, was changing "Further, as indicated by the cited documents below, it is well known in the art to determine the life of gas sensors in the form of percentage hours" to "Further, as indicated by the cited documents below, the Examiner takes Official Notice that it is well known in the art to determine the life of gas sensors in the form of percentage hours."